

No. 11(112)-80-8Lab/11760.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Sonapat Co-operative Sugar Mills, Ltd., Sonapat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 23 of 1978

between

SHRI PREM SINGH, WORKMAN AND THE MANAGEMENT OF M/S. THE SONEPAT
CO-OPERATIVE SUGAR MILLS, LTD., SONEPAT

Present:—

Shri Gian Chand, for the workman.

No one, for the management.

AWARD

This reference No. 23 of 1978 has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/HK/636-77/4339, dated 6th February, 1978 under section 10(i)(c) of the I.D. Act, 1947 for adjudication of the dispute existing between Shri Prem Singh, workman and the management of M/s. The Sonapat Co-operative Sugar Mills, Ltd., Sonapat. The terms of the reference was :—

Whether the termination of services of Shri Prem Singh was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties, parties put in their appearance, filed their respective pleadings. On the basis of which the following issues were framed by my learned predecessor :—

1. "Whether the termination of services of the workman was justified and in order ?
2. Whether the workman was on probation and was seasonal permanent basis ?
3. Whether the work of the workman was not satisfactory ?
4. If not to what relief is he entitled ?

Evidence of the management recorded on 6th February, 1979 partly Shri S.C. Jain, Chief Chemist of the mills who left the services of the mill was to be summoned as the second management witness but he could not be served with the notice as the management could not locate him inspite of their best efforts. After getting three adjournment the authorised representative of the management tendered Exhibit M-2 photostate copy of the termination order in evidence of the management and closed the same on 25th June 1979. The evidence of the workman was recorded on 23rd July, 1979. Arguments were heard on behalf of the workman. He also filed written arguments. None came forward for arguments on behalf of the management inspite of several opportunities given to them. I have gone through the arguments filed by the workman as well as the evidence oral and documentary placed by the parties on record carefully and decide the issues as under :—

Issue No. 1.—The management relied upon the report of the Chief Chemist which is Exhibit M-1 and Exhibit M-2 is be photocopy of the order of termination of the workman dated 16th April, 1977. On the other hand the workman has relied upon Exhibit W-1 the appointment letter issued to him by the management. Exhibit W-2 is the type copy of the termination order. The only witness examined on behalf of the management is Shri Hawa Singh, time-keeper who has only stated with regard to Exhibit M-1 the report of the Chief Chemist who recognised the signature of the Chief Chemist Shri S.C. Jain at point 'A' of Exhibit M-1. Exhibit M-1 contains the report of the Chief Chemist about the work of the workman which in his opinion was not to their satisfaction as the workman remained negligent in recording the P.H. of spray pond water which became acidic and resulted in heavy damage to the impellers of the injection pumps. He recommended the termination of the services of the workman on 3rd April, 1977. There is evidence that the workman was paid of the same date i.e. on 3rd April 1977 on season being closed on 31st March, 1977. The management terminated the services of the workman on 6th April, 1977 and the termination order was sent to the workman by regd. post. In the termination order the

management has counted the period of his services from the start of the season i.e. 3rd January, 1977. The fact has also been admitted by the workman and the date of start of season is not disputed but the workman submits that he joined the mills as Lab. Chemist on 16th November, 1976. The period may be counted from the date of joining and not from the 3rd of January, 1977. The plea of the management sounds strange that the period of service of the workman should not be counted from the date he joins as to what for the management had issued the appointment letter to the workman and burdened the management with wages for one & half months which has to be paid to the workman in vain. The prudent could not be so un-reasonable but it all is an after thought and a device to get rid of the workman. The management in wants to justify their action by sorting to such means as no prudent and reasonable man would consider justified and proper. As per the terms of his appointment letter workman shall be deemed to have been confirmed if the management does not terminate his services or extend his period of probation after one month of the expiry of the initial period of probation. In the present case the workman was appointed on 15th November, 1976 and his period of probation is upto 14th February, 1977. Because neither any order for termination nor any order for extension of his probationary period has been passed by the management within one month of the expiry of the initial probationary period on 14th February, 1977. The management cannot pass any order in respect of his termination without serving him a charge sheet or enquiry because he has been confirmed on his post automatically according to the conditions of his service contained in his appointment letter Ex W-1. The action of the management is unreasonable and capricious one prompted with ulterior motives and not in accordance with the bona fide exercise of power rising out of the contract of services. This issue is therefore decided against the management and the action of the management is not justified and not in order ?

Issue No. 2 & 3.—The issue No. 2 & 3 are dependent on issue No. 1 and the same are also decided against the management.

Issue No. 4.—As the order of termination has been held to be neither justified nor in order the workman is entitled to reinstatement on his post of Lab. Chemist seasonal with all the benefits attached to the post from the date of his termination till today as he is also entitled to continuity of service. I answer the reference while returning the same in these terms.

No order as to costs.

Dated the 18th October, 1980.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2590, Dated the 21st October, 1980.

Forwarded four copies to the Secretary to Government of Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Dispute Act, 1947.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11(112)-80-8Lab./11761.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Sonapat Co-operative Sugar Mills Ltd., Sonapat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT HARYANA, ROHTAK

Reference No. 186 of 1979

between

SHRI KATAR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. THE SONEPAT COOPERATIVE SUGAR MILLS, LIMITED, SONEPAT.

Present :—

Shri M.S. Rathi, for the workman.

Shri Vishnu Dutt, for the management.

AWARD

This reference No. 186 of 79 has¹ been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/SNP/95-79/41743, dated 21st September, 1979 under section 10 (i) (c) of the Industrial Disputes 1947 for adjudication of the dispute existing between Shri Katar Singh workman and the management of M/s. The Sonepat Cooperative Sugar Mills, Ltd., Sonepat. The terms of the reference was :—

Whether the termination of services of Shri Kartar Singh was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the same, filed their respective pleadings, on the basis of which the following issues were framed on 7th March, 1980.

- (1) Whether the present reference is barred by the principle of resjudicata?
- (2) Whether this court has no jurisdiction to decide this reference?
- (3) As per reference.

The management evidence was recorded on 1st May, 1980. Shri S.S. Dahiya, Assistant Cane Accountant was examined as the management witness. He stated that he joined the mills in the year 1978. The services of the workman were terminated in the year 1977. He has been dealing this case and on this score he has the knowledge of all the facts of this case. Initially the workman was appointed as store clerk in the year 1973. He was again appointed as store keeper in the year 1976,—*vide* appointment letter Ex. MW-1/1. The management lodged F. I. R. with the police station Sonepat on 2nd January, 1977 under section 406, 407, 420, 120 I. P. C. The workman was arrested and challaned in the criminal case pending in the court of the Judicial Magistrate Sonepat. The workman was placed under suspension on this ground and was asked to hand over charge to Shri Sul Singh. There was shortages of articles in the stores. Notice of shortages was issued to the workman,—*vide* Exhibit MW-1/2 and the workman submitted the reply to Exhibit MW-1/2 which is Exhibit MW-1/3. On finding the reply of the workman unsatisfactory his services were terminated. The workman preferred his civil writ petition against the order of termination which was dismissed by the High Court,—*vide* order copy Exhibit MW-1/4. He has further stated in cross examination that the workman was transferred to sugar sale department on 23rd July, 1977 and Shri Sultan Singh was given the charge of store. MW-1 neither denied nor admitted the suggestion that a no due certificate was received by the management,—*vide* receipt No. 1376 dated 30th September, 1977 the photo copy of which is Exhibit W-1. He has further stated that Managing Director was competent to terminate the services of workman after obtaining approval from the chairman under the standing orders. He has admitted that there was no such record where an enquiry was conducted against the workman or any charge sheet had ever been given to the workman. He has also admitted the fact that the workman was re-employed as clerk on temporary *Ad hoc* basis without prejudice to the case pending in this court,—*vide* order photo copy Exhibit W-2. It was also true that the workman was discharged from service on 21st February, 1980 and he himself was adjusted on the same day against the same post on which the workman was working. The fact was also admitted that the workman filed an appeal against the order of the Managing Director of his termination before the Registrar Cooperative Societies, Chandigarh which was decided in his favour with the order for reinstatement with full back wages. The management went in an appeal against the order before the Deputy Secretary Cooperation, Chandigarh who set aside the order of the Registrar and advised the workman to seek remedy from elsewhere.

The workman himself was examined as his own witness. He stated that he was appointed as clerk with the respondent on 1st December, 1973. At the time of termination of his services he was getting Rs 540 per mensem after deduction of Provident Fund etc. His services were terminated on 22nd September, 1977,—*vide* photo copy Exhibit W-3. He was appointed store keeper with effect from 20th May, 1976 and was confirmed after the expiry of the probationary period of six months. He was not given any charge-sheet nor any enquiry was conducted by management against him prior to his termination. After his termination he was given the clearance certificate which is Exhibit W-4. He stated that the Managing Director issued his termination order while under the Model Bye laws governing the cooperative Sugar Factories the Managing Director had no such power in cases of employees who were in the pay scale higher than Rs 200. This power rested with the chairman in view of the resolution No. 2 of 26th October, 1976 adopted by the Board of Directors. He has also stated that he was not paid one month notice pay or the service compensation at the time of termination of his services. The management lodged an F.I.R. with the Police Station Sonepat in January, 1977 against Shri S.C. Jain Transporter of Farnish oil. The F. I. R. was lodged on the basis of information given by him to the Managing Director. Subsequently he was falsely implicated in this case. He further stated that Shri Rajinder Singh who is his relative contested the Vidhan Sabha election against Smt. Shanti Rathi in 1977 and he lost the election but on political grounds he was victimised. He was admitted in his cross examination that he was arrested on 4th July, 1977. He has repudiated the suggestion of the management rep. that he was placed under suspension just after his arrest and release on bail. He has also denied the suggestion that there was any shortage of store materials and a list of the same was given to him. It was also denied that his services were terminated on account of these alleged shortages in the stores. He has also stated that he had no knowledge whether the management deposited one month salary in lieu of notice in his account on 24th September, 1977 in the Central Cooperative Bank Sonepat. He has also denied the suggestion that on 23rd September, 1977 he was offered one month salary. He has also denied the suggestion that his services were terminated on the allegation of misbehaviour.

Arguments are heard and the workman filed written arguments also. I have carefully perused the evidence oral and documentary on the record and decide the issues as under:—

Issue No. 1.—The management has pleaded that the workman went in appeal against the order of his termination passed by the Managing Director on 22nd September, 1977 to the Registrar, Cooperative Societies, Chandigarh who transferred this appeal to the Deputy Registrar, Cooperative Societies Rohtak who accepted the appeal and set aside the order of the Managing Director while reinstating the workman with full back wages,—*vide* his order dated 3rd January, 1978. The management after feeling aggrieved by the order of the Deputy Registrar went in second appeal to the Deputy Secretary, Cooperation, Government of Haryana, Chandigarh, who set aside the order of the Deputy Registrar on the ground that order passed by the Deputy Registrar was without jurisdiction after treating the appeal as a revision and the workman/respondent was advised to seek legal remedy in view of termination of his services elsewhere. The workman preferred a civil writ petition against the order of the Deputy Secretary, Cooperation Government of Haryana in the High Court of Punjab and Haryana, Chandigarh. The same was dismissed,—*vide* order of the High Court dated 25th April, 1978. Now the management contends that when the workman has chosen the remedy *vide* civil writ petition in the High Court of Punjab and Haryana he cannot come to this court for the same cause of action as the matter has been finally decided by the High Court and is barred to raise the same issue before a court which is of inferior jurisdiction under the principle of res judicate as provided in section 11 of the C.P.C. The workman representative on the other hand has contended that under mistaken belief that the Registrar, Cooperative Society had jurisdiction to hear the appeal against the order of the Managing Director went before him in appeal who also assumed jurisdiction which he had actually not and decided the appeal in his favour. Aggrieved by this order the management went in second appeal to Deputy Secretary Haryana Cooperation who set aside the order of the Deputy Registrar on its being without jurisdiction. The workman preferred a civil writ petition against the order of Deputy Secretary in the High Court which was also dismissed. The order of the first court i.e. Deputy Registrar cooperative Societies Rohtak was without jurisdiction and when any court assumed wrong jurisdiction then the decision cannot operate as res judicate. As the order of the Deputy Registrar has been declared without jurisdiction by the Deputy Secretary and by dismissing the civil writ of the workman against the order of Deputy Secretary Ex-W-7 by the Punjab & Haryana High Court the order of the Deputy Secretary has been confirmed to the same extent and *vide* the order Exhibit W-7 the workman has been left with the option to going for any other legal remedy against his order of termination by the Managing Director. The workman Representative has cited A.I.R. 1971 S.C. page 2358 in support of his contention. The Supreme Court has held in this case that by an erroneous decision if the court assumed jurisdiction which it does not possess under the statute, the question cannot operate as res judicate between the same party whether the cause of action in the subsequent litigation is the same or otherwise. Under section 11 of the C.P.C. it has been provided that when a matter is directly and substantially in issue between the same parties and which has been decided finally by a court of competent jurisdiction only in that case the principle of res judicate shall apply in a subsequent dispute between the same parties on the same cause of actions. It has been admitted on both sides that civil writ petition filed by the workman against the order of the Deputy Secretary Cooperation Haryana was dismissed by the Honourable High Court. The order of the Deputy Secretary sets aside the order of the Deputy Registrar being without jurisdiction and as such passed by the court of incompetent jurisdiction. In the light of the Supreme Court Judgment cited above and the provision of section 11 of the C.P.C. it cannot be contemplated that the order of the Honourable High Court confirming the order of the Deputy Secretary by dismissing the writ petition of the workman shall operate as res judicata to the present reference and as such bars the workman from raising the dispute against the management. This issue is, therefore, decided against the management.

Issue No. 2.—On the basis of the same plea of res judicata the management contends that as the matter has been finally adjudicated upon by the Hon'ble High Court which is superior to this court and as such this court has no jurisdiction to decide the present dispute. While deciding Issue No. 1 against the management. I have discussed the matter at length and this issue being dependent on issue No. 1 is also decided against the management because the plea of the management fails on the same ground.

Issue No. 3.—The management has relied upon Ex. MW-1/1 which is the appointment order of the workman as store-keeper, Exhibit MW-1/2 a letter issued by the management to the workman intimating him of the shortages found in stores on the basis of ground balance, Exhibit MW-1/3 is the letter sent by the workman to the respondent on the subject of adjustment of store items and Ex-MW-1/4 is the order of the High Court in a civil writ petition No. 1478/1978. The only witness examined on behalf of the management is Shri S.S. Dahiya. The workman was placed under suspension on account of his involvement in a criminal case of theft of furnace oil which is still pending in the court of Judicial Magistrate Sonapat. The services of the workman were terminated according to the witness of the mgt when his reply Exhibit, MW-1/3 to the notice regarding shortages in store Exhibit MW-1/2 was found unsatisfactory by an order of the Managing Director, dated 22nd September, 1977. The workman has relied upon the documents Exhibit W-1 the letter to the respondent management for release of his arrear, dated 30th September, 1977, Exhibit W-2 the photo copy of appointment order, dated 21st December, 1979, Exhibit W-3 is the order of termination of services of the workman, Exhibit W-4 is the clearance chit, Exhibit W-5 is the photo copy of the resolution of Board of Directorate, Exhibit W-6 is the transfer order of the workman to sugar sale section, Exhibit W-7 is the order of the Deputy Secretary, Government of Haryana, Cooperation, Exhibit W-8 is the Model Bye Laws of Cooperative Sugar Factory. The workman himself was examined as his own witness who has stated that he was a confirmed employee of the respondent getting Rs. 540 per mensem at the time of his termination and was in the pay scale of Rs. 255—8—295/12—430. The Managing Director terminated his services on 22nd September, 1977. He has also stated that the Managing Director was not authorised to take such action against him as he was competent only to take action against the employees who were in the pay

scale of Rs. 200 or below but as he was in the higher scale and the action of the Managing Director was arbitrary and beyond his authority and competence. He has filed Exhibit W-8 in support of his above statement. He has also referred to a resolution dated 26th October, 1976 passed by the board of Directors by which the chairman of the board was authorised to take such an action against any of the workman in the pay scale higher than 200. He has also stated that neither any notice nor any charge-sheet was issued to him prior to his termination and enquiry was also not held by the respondent against him. He has also stated that no notice pay or retrenchment compensation was given to him at the time of his termination. This fact has also been admitted by the mgt. witness in his cross examination. From the evidence on record and the circumstances of the case it can well be gathered that the work and conduct of the workman had been quite satisfactory up to 30th June, 1977 when the workman was given a notice of shortages in the stores. Prior to this he was appointed on a post of store-keeper from his initial pay scale of Rs. 110 to quite higher scale of Rs. 255. This could only have been done when the workman was working efficiently and diligently. The plea of the workman that he was misunderstood by the management as having support to Shri Rajinder Singh who contested the Haryana Vidhan Sabha election against Shrimati Shanti Rathi and the mgt. being under political pressure was annoyed with him and had adopted a revengful attitude against him. The workman was arrested on 4th July, 1977 and was placed under suspension on 23rd July, 1977. According to the statement of the management witness the workman was terminated on account of shortages found in the stores vide letter exhibit MW-1/2. The services of the workman were terminated on 22nd September, 1977 and a clearance chit was issued to the workman on 27th September, 1977 just after four days of his termination. It seems to be strange that how the workman was able to make good the shortages in the stores within such a short period. The reply Exhibit MW-1/3 of the workman regarding the shortages seems to be correct and the mgt. was not in a mood to adjust the items shown as shortages in fact which were lying in store and could be discovered on physical verification of the store.

The contention of the management that the services of the workman were terminated in accordance with the terms and conditions of his appointment by giving him one month notice or on the payment of one month gross salary in lieu thereof. It is an admitted fact that the workman was confirmed employee against a regular post and to terminate his services under the garb of the contract of service is a unfair labour practice. He ought to have been given the charge-sheet and enquiry must also have been held in respect of the allegations and he should have been given an opportunity to defend himself and explain his position in respect of such allegations. The act of the management cannot in any way be considered as legal and justified when it has been passed without observing the legal procedure and which is in violation of the principle of natural justice. The industrial jurisprudence is based on special and natural justice. In no way the management has to be allowed to hire and fire any workman at their own sweet will.

Even the management has not paid the workman the notice pay at the time of termination of the services of the workman which was to be paid to him according to the terms of appointment. The learned authorised representative of the workman has cited A.I.R. 1976 S.C. page 1111, section 2(00) of the I.D. Act, defines retrenchment. Break down of section 2(00) unmistakably expands the semantics of retrenchment. "Termination.....for any reason whatsoever" are the key words whatever the reason. Every termination spells retrenchment so the sole question is has the employees services been terminated. Verbal apparel apart the substance is decisive. Termination embraces not merely the act of termination by the employer but the fact of termination. Howsoever produced we can visualise the abuses by employer by suitable verbal devices circumventing the area of section 25 F and section 2(00). In the present case also the management has passed a composite order of employment and termination. A preemptive provision to terminate the services is also struck by the same voice as the post appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision. In the present case the termination is retrenchment under section 2(00) and it is proved fact that the management has not complied with the conditions precedent laid down in section 25F of the I.D. Act. The management has not paid the retrenchment compensation to the workman at the time of his termination. In Hospital Majdoor Sabha case reported in 1960 II S.C.R., page 866, Mr. Justice Gajender Gadkar has held "it is difficult to exceed to the argument that when the section imposes inmandatory terms a condition precedent non-compliance with the said condition would not render the impugned order of retrenchment in valid. Failure to comply with the said provision renders the order in valid and inoperative."

The management reappointed the workman,—vide the appointment order, dated 21st December, 1979 against the vacancy of Assistant Cane Accountant. This show shows that the termination of the workman was on a superfluous charge of shortages and if there would have been any truth in the charges the management had not appointed him,—vide order Exhibit W-2 mentioned above.

In the light of the above discussion and looking at from every angle the action of the management in terminating the services of the workman is neither justified nor in order. The workman is, therefore, entitled to reinstatement with continuity of service and full back wages at Rs. 540 per mensem excluding the amount which he has received from 21st December, 1979 the date of his appointment as Clerk against vacant post,—vide Exhibit W-2 to his date of termination against this appointment on 21st February, 1980, for which he has remained in gainful employment. I answer the reference while returning the same in these terms. No order as to costs. Dated the 17th October, 1980.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

Endst. No. 2589, dated 21st October, 1980.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.